

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Telephone Number Portability)

CC Docket No. RM 8535

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**REPLY COMMENTS OF PAGING NETWORK, INC.
ON FURTHER NOTICE OF PROPOSED RULEMAKING**

PAGING NETWORK, INC.

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TABLE OF CONTENTS

	<u>Page No.</u>
Summary.....	i
I. STATEMENT OF INTEREST.....	1
II. PAGING AND OTHER MESSAGING SERVICES SHOULD NOT BE REQUIRED TO PAY FOR THE LEC COST OF ESTABLISHING NUMBER PORTABILITY.....	1
III. CONCLUSION.....	5

Summary

Paging and messaging services are low-cost, highly efficient and highly competitive services. The Commission properly excluded them from the duty to provide number portability. For the same reasons, it should also exclude them from paying for the LEC provision of portability. Failure to do so will adversely affect the value of these services to the public without any offsetting competitive benefits. Section 251(e)(2), which must be construed consistently with the overall objectives of the Telecommunications Act of 1996, gives the Commission the required discretion to exempt them.

The Commission should make clear that alternative bases, such as the per-telephone line basis recently adopted by the Connecticut Department of Public Utility Control, are unacceptable.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	RM 8535

**REPLY COMMENTS OF PAGING NETWORK, INC.
ON FURTHER NOTICE OF PROPOSED RULEMAKING**

Paging Network, Inc. ("PageNet"), by its undersigned counsel, hereby submits its reply comments in the above-captioned proceeding.

I. STATEMENT OF INTEREST

PageNet is the world's largest paging carrier with almost eight million paging units in service. Its monthly rates for paging and messaging services average \$8.33. Any significant increase in its costs to contribute to number portability would disproportionately affect its profitability and the value of the services it provides to the public.

**II. PAGING AND OTHER MESSAGING SERVICES SHOULD
NOT BE REQUIRED TO PAY FOR THE LEC COST OF
ESTABLISHING NUMBER PORTABILITY**

PageNet fully concurs in the Commission's conclusion that paging and other messaging services should be excluded from number portability requirements. See *Further NPRM* at ¶156. That includes both interim and long-term number portability. These are low-cost and highly efficient services. Monthly subscriber charges range from \$8.00 to \$10.00. Their value derives largely from their low cost and their efficient use of

telecommunications resources. Much of that value would be lost if they were forced to incur the costs of number portability, which are likely to be significant. That value would be lost, moreover, without any corresponding benefit. Paging and other messaging services are already highly competitive. Number portability is, thus, not required to encourage the development of competition for those services.

Paging and other messaging services, for the same reasons, should not be required to share industry and other carrier-specific number portability costs. The Commission solicits comment as to whether it can exclude such industry segments from the cost-sharing requirements of Section 251(e)(2), as added to the Communications Act by the Telecommunications Act of 1996. *See Further NPRM* at ¶209.

Viewed in context, as noted in the comments of a multitude of parties,¹ it is clear that it can. Section 251(e)(2) gives the Commission discretion to determine the extent to which number portability costs are to be shared. It, thus, provides that:

The cost of establishing . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission. [Emphasis supplied.]

¹ See, e.g. Comments of Airtouch Paging, Cal-Autofone and Radio Electronic Products Corp. ("AirTouch Comments") at 5.

In exercising that discretion, the Commission obviously must consider the overall objectives and structure of the 1996 legislation. It is clear that Congress, in mandating number portability, was primarily concerned with wireline local exchange competition. It expressly left to the Commission the task of determining the extent to which wireless carriers should be included within the definition of a local exchange carrier ("LEC"), and is thus subject to the Section 251(b)(2) duty to provide number portability. Section 153(44) expressly excludes wireless service carriers from that definition "except to the extent that the Commission finds that such service should be included in the definition of such term." Logically, the Commission's discretion over wireless number portability cost-sharing should correspond to its discretion over the applicability of portability itself.

Exclusion of paging and other messaging services from such cost-sharing is, moreover, consistent with the overriding Congressional purpose to reduce entry barriers and to foster entry and innovation in the telecommunications industry. That overriding purpose is reflected, for example, in Section 253, which prohibits state created entry barriers. *See also* Section 10. It would be the height of perversity to construe Section 251(e)(2) to require the erection of unjustified entry barriers, which is precisely what would happen if these services are forced to share the costs of number portability.

It is also consistent with the Commission's own interpretation of "competitively neutral" for Section 251(e)(2) purposes to exclude these services from the sharing of these costs. See *Further NPRM* at ¶210. As the Commission has properly concluded, "a competitively neutral cost recovery mechanism should not have a disparate effect on the ability of competing service providers to earn a normal return." Connecticut, for example, has only recently established a per-telephone line charge applicable to all carriers, including paging and messaging, of \$1.00.² With monthly paging costs ranging from \$8.00 to \$10.00, it is clear that costs of this Order would have precisely that effect on those services.

Implicit in the Commission's exclusion of these services from the duty to provide number portability, moreover, is the recognition that number portability is of little competitive importance to them. As the Commission soundly observed, "it is fundamentally unfair to impose any new or different obligations on carriers and customers that do not benefit from service number portability." *Further NPRM* at ¶59. To do otherwise would raise serious Constitutional questions under the Fifth Amendment's due process clause. See generally *Delaware Tribal Business Committee v. Weeks*, 430 US 73, 84 (1977).

² See DPUC Docket No. 95-11-08 at 63 ("DPUC Order").

Furthermore, charges such as the per-telephone line basis adopted recently by the Connecticut Department of Public Utility Control,³ will adversely affect the value of paging and messaging services and seriously and disproportionately affect service provider profitability.⁴ The \$1.00 per-line charge authorized by that state commission represents 12% of the average charge for PageNet service. *See DPUC Order* at 63. Such a result is particularly inappropriate given the lack of present benefit that number portability confers on paging and messaging services. It has the effect of requiring these services to subsidize the wireline LECs who are the true beneficiaries of number portability and whose services are better able to absorb the costs thereof.

III. CONCLUSION

For the reasons stated, the Commission does have the authority under Section 251(e)(2) to exclude paging and other

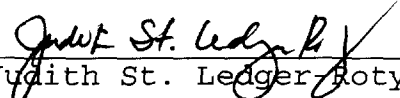
³ *See DPUC Order* at 64.

⁴ *See AirTouch Comments* at 7.

messaging services from number portability cost-sharing and should do so.

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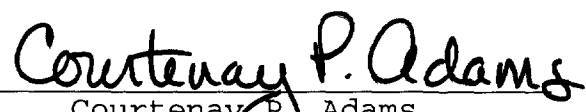
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